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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 20, 1998

2384.002

BY HAND

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: PETITION FOR RECONSIDERATION OF:

MEMORANDUM OPINION AND ORDER ON
RECONSIDERATION OF THE

SIXTH REPORT AND ORDER
MM DOCKET NO. 87-268

Dear Ms. Salas:

Enclosed please find the original and 10 copies of a Petition for Reconsideration of the Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order filed in the above referenced proceeding on behalf of the National Religious Broadcasters' Association.

If you should have any questions regarding this matter, kindly direct them to the undersigned.

Yours truly,


Bradford D. Carey

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:)
)
Advanced Television Systems) MM Docket No. 87-268.
and Their Impact upon the Existing)
Television Broadcast Service)

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APR 20 1998

To: THE COMMISSION:

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION FOR RECONSIDERATION

OF MEMORANDUM OPINION AND ORDER

ON RECONSIDERATION OF THE SIXTH REPORT AND ORDER.

The National Religious Broadcasters' Association ("NRB"), by its undersigned Counsel, hereby states its Petition for Reconsideration of the Commission's Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order ("Reconsideration Order").

The Reconsideration Order, simply stated, ignored what NRB had filed in response to the Sixth Notice of Further Rule Making in this proceeding and trivialized the filings of National Public Radio-- to the extent that, intended or not, it appears that the Commission is determined to afford the path of least resistance to television broadcasters to implement DTV at an early date regardless of the permanent damage it may do to the noncommercial, educational, FM broadcast service.

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I. HISTORY, IN BRIEF.

For two decades or more, the Commission has been aware that noncommercial, educational, FM stations operating within the “reserved band”¹ (when operating at power, and from a location, such that the noncommercial FM station delivers a signal substantially stronger than that delivered by a channel six television station to the same location) may cause interference to reception of the channel six television station. As a result of various Commission proceedings, section 73.525 was added to the Commission’s Rules. This section “referees” the relationships of NTSC channel six stations to noncommercial FM stations, primarily at the expense of noncommercial FM interests, by limiting the power and antenna heights with which noncommercial FM stations may operate, based on the distance to the “affected channel six station,” the relative power levels, and the channel on which the noncommercial FM station operates or proposes to operate.

Fairly construed, section 73.525 protects channel six stations, literally at the cost of coverage of noncommercial FM stations and the creation of new noncommercial stations. Moreover, in many cases it gives substantial control over the noncommercial FM station to the channel six licensee to the extent that the channel six licensee, by permitting or declining to permit location of the

¹The reserved band is that group of channels (201-220) that occupy the lowest part of the FM Broadcast Band, 88.1 MHZ to 91.9 MHZ.

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noncommercial FM station's antenna on the tower on which the channel six transmitting antenna is located, can limit the noncommercial FM station's coverage substantially. Worse, many noncommercial FM stations that are co-located face eviction from the towers on which they are co-located so that the tower space and/or weight and wind loading capacities can be used for the channel six licensee's DTV antenna and transmission line.

Thus, many existing noncommercial stations will be forced to substantially reduce their coverage as they get bumped off towers on which channel six stations are located. This is grossly unfair by itself. Worse, the Commission, by now including channel six in its "core spectrum" for DTV, has exacerbated the situation and proposed to perpetuate it.

The existence of section 73.525 (47 C.F.R. section 73.525) is an affront to section 307(b) of the Communications Act of 1934, as Amended and any notions that noncommercial FM services should flourish and the whip-saw of channel six stations evicting existing noncommercial FM stations from the channel six stations' towers (thus making them no longer able to use the higher power and antenna limits of co-location) and the Commission's inclusion now of channel six in the DTV core spectrum must not be permitted.

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II. THE COMMISSION HAS AN OPPORTUNITY TO RETURN NONCOMMERCIAL FM SERVICE TO THE STATUS INTENDED BY CONGRESS.

The Commission now has a unique opportunity to return the noncommercial, educational, FM Broadcast service to the status intended by Congress -- a vital, primary, service -- not one that grovels for an existence where it can find holes between, or obtain co-location the towers of, channel six television stations.²

As part of its DTV (or "ATV") proceedings, the Commission has been focusing on "core spectrum" for DTV. NRB, in its prior filings,³ has urged that the Commission not allot channel six for DTV operations, recover the spectrum at the conclusion of the transition period, and not allot the channel six spectrum to services which would be at risk of mutual interference with, or interference from or to, the noncommercial FM broadcast service.

²NRB is already aware that some noncommercial FM stations that are co-located with channel six stations must vacate their tower sites. Pursuant to 73.525, a noncommercial FM station that must vacate a tower on which the channel six station is located, and can not find antenna space within a few hundred yards at the same height, may be reduced to a small fraction of the power at which it has been operating, and coverage minuscule in comparison to that which has been obtained heretofore.

³National Public Radio also has been active in urging the Commission to take this opportunity to save the noncommercial FM band from the present problems as part of the DTV proceedings.

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While the Commission has the opportunity, once and for all, now, to end the artificial and arbitrary limitations on stations on channels 201-220, the Reconsideration Order contemplates that stations may continue to occupy channel six forever as DTV facilities.⁴

III. THE COMMISSION MIS-UNDERSTANDS THE CHANNEL 6/NCE-FM TECHNICAL SITUATION.

In the Reconsideration Order, the Commission facially addresses concerns advanced by NPR. The Commission either does not understand the situation brought about by the Commission's technical rules, section 73.525 in particular, or is ignoring the situation, when at paragraphs 40, *et seq*, it refuses to recognize that if the Commission permits DTV operation on channel six, the noncommercial FM band will permanently be down-graded to second class status. Simply stated, there is no reason to continue to artificially limit coverage by noncommercial FM stations to protect channel six television stations, when there is an absence of justification for television stations to be permitted to continue to operate on channel six after the date on which each television licensee must surrender one of its channels.

⁴The Commission's Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order, which also refers to the newly defined core spectrum, is the subject of a separate, but similar, Petition for Reconsideration.

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IV. THE COMMISSION WRONGLY LUMPED CHANNEL SIX WITH OTHER LOW VHF CHANNELS.

In its Decision (at paragraphs 41 *et seq*), the Commission refers to the “low-VHF channels” as if they were homogeneous and all subject to the same problems and only the same problems. However, as the Commission well knows, there are structural spectrum problems with the unique relationship between channel six and the adjacent channel noncommercial FM facilities that just do not affect other low-VHF channels. Thus, while the Commission’s Reconsideration Order might be correct with respect to channels two through five, it just plain exhibits a lack of understanding of the unique reasons that channel six ought not to be part of the DTV core spectrum.

V. THE COMMISSION COULD WELL ADOPT A CORE SPECTRUM OF CHANNELS 2-5 AND 7-51 OR 7-52.

The Reconsideration Order is fatally flawed because it lumps channel six with channels 2-5. Channel 6, however, because of its unique adjacent channel relationship with noncommercial FM stations is, and must be treated as, different. Nonetheless, the Commission considered the benefits of adding channels 2-6 to the core spectrum; but, however, never considered the merits of adding channels 2-5 (but not six) to the core spectrum.

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If any channel six stations are permitted to remain after the conversion period, permission to remain on channel six should not be granted until the channel six permittee has:

1. committed to pay any/all costs involved in resolving any/all interference to or from noncommercial FM operations, present and future; and,

2. agreed in writing that applications for modification of existing stations and permits for new stations may be prepared, filed and granted without reference to the limitations that section 73.525 otherwise would impose on such modifications or new stations,

and, the Commission has amended its rules to delete the limitations on modifications to existing, and applications for new, noncommercial FM stations that are imposed by section 73.525.

VI. CONCLUSION.

NRB urges that the Commission reconsider its determination to include channel six in the core spectrum for permanent DTV operation. Ever since the Commission adopted section 73.525 of its Rules and Regulations, most noncommercial FM stations have been unable to significantly increase their coverage and new stations have been severely limited in coverage -- if there is a channel that is usable at all -- because of the section 73.525 limitations.

Removal of television broadcast signals from channel six through the DTV transition will permit the Commission to remove these arbitrary limitations.

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Hundreds of noncommercial FM stations will be able to increase their coverage and more new stations can be constructed.

The Communications Act of 1934, as Amended, required that the Commission set aside spectrum for noncommercial broadcasting. The limitations of section 73.525 have restricted the use of that spectrum. It is time, and the Commission now has the opportunity, to remove those limitations.

The Commission's lip service to the filings of NPR and apparent indifference to the arguments of NRB,⁵ make clear that the Commission is now looking only at one service at a time, without considering the impact on other services. That is how the channel six/noncommercial FM band interference was created. The Commission now has a unique opportunity to cure those problems. All that is required is to prohibit permanent operation on channel six by DTV stations.⁶

⁵NRB's latest participation in this proceeding was the filing of Reply Comments in response to the Sixth Further Notice of Proposed Rule Making.

⁶The spectrum can be used for many other uses that are not incompatible with the adjacent noncommercial FM stations, and some operations that would be directly compatible with (and should be on channels adjacent to) the noncommercial FM band.

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Respectfully Submitted,

National Religious Broadcasters' Association

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